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HUMAN RIGHTS QUESTIONS

Allegations regarding infringements of trade-union rights in South Africa

Note by the Secretariat

1. The Economic and Social Council, in resolution 1991/37 of 31 May 1991 requested the Ad Hoc Working Group of Experts on southern Africa to continue to study the situation relating to allegations of infringements of trade-union rights in South Africa and to report thereon to the Commission on Human Rights and the Economic and Social Council.

2. The Ad Hoc Working Group of Experts submitted to the Commission on Human Rights at its forty-eighth session a report (E/CN.4/1992/8) prepared in accordance with the Commission resolutions 1991/8 and 1991/21. The section of the report that is relevant to the Council's request is reproduced in the annex to the present note.

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Annex

IV. RIGHT TO WORK AND FREEDOM OF ASSOCIATION

A. Situation of black workers

224. At its 806th meeting in London, a witness from South Africa, speaking in his personal capacity, gave testimony to the Working Group regarding the situation of black workers in that country. He gave a brief background to the laws enacted by the Labour Relations Act as amended periodically and referred to one particular area which was not covered by the Act: workers in the public sector. The legislation, he said, which covered those employed by municipalities, failed to deal with workers employed in the health sector, railway workers, teachers, police, army personnel, central government employees, and regional and provincial government employees. He added that basic workers' rights legislation, for example, unemployment insurance funds or workmen's compensation laws, did not cover a large number of workers in South Africa. He said that 34 per cent of all economically active whites and 14 per cent of all economically active employees of other racial groups were employed in the public sector. Their exclusion from the Labour Relations Act meant that they did not have the right to strike, the basic right to join the trade union of their choice, or the facilities that went with the right of freedom of association. He said some progress had been made with respect to railway workers as a result of their strike action, as well as the fact that the Government of South Africa had embarked on a process of privatization of the railways. Thus, the witness said, the South African Railway and Harbour Workers' Union (SARHWU), an affiliate of the Congress of South African Trade Unions (COSATU), had now been recognized by the state corporation running the railways and had some collective bargaining rights. However, with regard to workers in other sectors, the situation remained unchanged.

225. The same witness stated that ongoing negotiations between COSATU and the Commission for Public Administration (the administrative body of the Government in charge of the public sector) were dealing with the question of trade union rights for the public sector. Although an agreement on the question of the trade union rights of workers in the public sector in general had been reached, there was a deadlock because the COSATU proposal that the Labour Relations Act should be extended to those workers was not accepted by the Commission. The Commission wanted the question to be addressed under a different Act.

226. Referring to farm workers, the same witness said that 600,000 workers were employed every year on a full-time basis in the farming sector and about the same number on a seasonal or temporary basis. Farm workers, who were not covered by the Labour Relations Act, did not benefit from any legislation covering minimum wage, hours of work, sick pay, sick leave or any other basic workers' rights. Further, he said that as a result of pressure from COSATU in 1990, the Government had requested the National Manpower Commission (NMC), a temporary commission set up by the Government, to investigate the rights of

farm workers. NMC had recommended that farm workers be given the same rights as those embodied in the labour laws. The Department of Manpower had amended the recommendations before sending them to the Government by giving wide discretionary powers to the Minister, enabling him to exempt farmers from any or all of the provisions as recommended and thus negating any legislation that might be passed. Another problem faced by farm workers, according to the same witness, was that the basic conditions in statutes such as the Employment Act and the Unemployment and Insurance Fund would only be presented to Parliament for extension to farm workers in 1992. Further, other statutes, such as the Wages Act and the Labour Relations Act, which afforded union rights were only due to be presented to Parliament for discussion in 1993 and it would appear that the Government intended to wait for a further period of two years before adopting the extension of these laws to farm workers.

227. The same witness also dealt with the situation of the estimated over one million domestic workers, the vast majority women, who formed half of the total women in employment. These workers had no protection against dismissal or rights to paid holiday or maternity leave. After negotiations between NMC and COSATU, an agreement had been reached to extend, in principle, the range of rights to domestic workers, but without a commitment to pass legislation - only to promulgate broad guidelines. Therefore, there would be no compulsion on the part of employers to implement them.

228. Concerning workers in the so-called "homelands", where the basic legislation protecting the rights of workers in South Africa was not applied, the same witness said that the so-called "homelands" had attempted to pass legislation in order to prevent South African trade unions from operating within their jurisdiction by enacting, for example, that workers might only join trade unions registered in that particular so-called "homeland", thus automatically preventing workers from joining trade unions registered and headquartered within the official boundaries of South Africa. The witness quoted the example of the position of textile workers in KwaKwa, near Bloemfontein, who might not join a trade union with headquarters in Durban or Johannesburg. He said that in an attempt to redress the problem, COSATU had embarked during the previous 18 months on a process of negotiation and had exerted pressure on all the so-called "homeland" governments, in order to ensure that trade union rights were offered on a national basis. In addition, there had been large-scale industrial action, particularly in Ciskei, Transkei, KwaKwa and Bophuthatswana which, he said, had resulted in numerous detentions and other human rights abuses, especially in the so-called "homeland" of Bophuthatswana.

229. Some of the so-called "homeland" governments had, in principle, agreed to an extension of trade union rights, but the implementation of such agreements had run into difficulties owing to the bureaucratic process of law making, which was particularly cumbersome in the areas in question. Through negotiation and pressure on these governments, the witness reported, COSATU had met with varying degrees of success. COSATU had proposed that a schedule of South African laws applicable to the so-called "homelands" should include the Labour Relations Act. Referring to the schedule, the witness said that it

was currently largely concerned with security legislation. The witness said that the reaction of the governments of the so-called "homelands" to this suggestion was not yet known and, although it seemed that the Government of South Africa would be willing to subscribe to this proposal, its response was not yet clear.

230. The same witness clarified the situation regarding the amendments to the Labour Relations (Amendment) Act of 1988, which had curtailed the rights of workers in many respects, and said that the amendments introduced in particular earlier in 1991 had repealed the 1988 amendments, thus restoring the situation as it existed in 1979, and had reinstated the limited rights previously given to black trade unions, largely in the private sector.

231. At its 812th meeting, in London, the Working Group received testimony from a witness from the University of Cape Town concerning the situation of farm workers. It was hoped to extend to them the provisions of the Basic Conditions of Employment Act, especially in respect of working conditions, hours of work, overtime and leave pay, but the bill in question had not been tabled in Parliament and had been deferred until 1992. Similarly, farm workers had not yet been included under the Unemployment Insurance Act.

232. The witness also referred to the situation of mineworkers and domestic workers, which was far from satisfactory. As they were not protected under any statutes, their rights were governed by the general common law, which did not protect the rights of workers in respect of freedom of association or against victimization for trade union activities.

233. In testimony to the Working Group at its 812th meeting, in London, a representative of the International Labour Organization (ILO) referred to the situation of workers in the agricultural sector, estimated to be in the region of 1.3 million employed on a regular basis, and another half million seasonal workers. In ongoing discussions and recommendations by NMC, dealing with agricultural as well as domestic workers and those in the public sector, the witness said, consistent reference had been made to international labour standards. However, proposals so far fell far short of even the Labour Relations (Amendment) Act.

234. The same witness pointed out that the Labour Relations Act of 1979 and all amendments to it over the years had never extended or applied to the so-called "homelands" in South Africa. They therefore operated under the previous Industrial Conciliation Act or even the notorious Master and Servant Act. The legal situation of workers in the so-called "homelands" was totally unacceptable.

B. Trade union activities

235. It was reported in The Independent of 25 June 1991 that the trial of four COSATU officials, Mr. Jay Naidoo, General Secretary of COSATU, Mr. Sidney Mufamadi, Assistant Secretary of COSATU, Mr. Moses Mayekiso,

General Secretary of the Metal Workers' Union (MWU) and Mr. Babe Schalk, had begun on 24 June 1991, under heavy police guard. The union officials, charged with the assault and kidnapping of a suspected police spy, had reportedly pleaded not guilty. The proceedings were alleged to have been filmed by the police. The trial had reportedly arisen out of incidents which took place on 28 August 1990, when a man allegedly behaving in a suspicious manner outside the COSATU premises in Johannesburg and who had been following a prominent anti-apartheid activist, was dragged inside by union officials, who discovered that he was carrying a two-way radio. It was further reported in The Guardian and the International Herald Tribune of 16 October 1991 that the four accused faced sentences ranging from probation to life imprisonment, following their conviction on 15 October of the kidnap and assault of a plain-clothes policeman. Sentences would reportedly be announced at a later hearing.

236. On the same subject, The Times of 25 June 1991 reported that veteran anti-apartheid campaigner Archbishop Trevor Huddlestone had joined African National Congress (ANC) leaders and some 150 black workers in a protest against the aforementioned trial. Addressing protestors outside the magistrate's court before the trial began, the 78-year-old Anglican prelate reportedly said that the prosecution was in breach of a government pledge to ANC to halt political trials.

237. The Guardian of 25 July 1991 reported that security branch documents which it had obtained indicated that the South African secret police and the Inkatha movement had jointly run the United Workers Union of South Africa (UWUSA).

238. At its 812th meeting, the Working Group was informed that, over the previous 12 months, a fundamental change in the relationship between trade unions, employers and the State had taken place. A series of negotiations with the South African Employers' Consultative Committee on Labour Affairs (SACCOLA) and then with the State administration, including the Department of Manpower, had culminated in the Labour Minute (or "Laboria") of September 1990, under which the State agreed that no new legislation would be introduced without prior consultations with representatives of the trade union movements. It had also been agreed that NMC would be restructured on a representational basis and that COSATU and the National Council of Trade Unions (NACTU) would serve on the Commission. This was the first time that organizations associated with liberation movements in South Africa had agreed to serve on a statutory tribunal and it would provide a way for the trade union movements to participate and assist in the formulation of new labour law. Although the proportion of representation was still under discussion, the witness said that the process was expected to be finalized by the end of December 1991.

239. The same witness referred to the government funding of the Inkatha Freedom Party and its affiliate, UWUSA, which had affected the trade union situation in South Africa. Referring to the Labour Minute, the witness said that it was envisaged that public sector workers would come under the Labour Relations Act within a period of two years.

240. The representative of ILO, in testimony at the 812th meeting, referred to a tripartite workshop on the Labour Relations Act which the ILO had organized in May 1990 at Harare. This had been the first occasion when trade unions, including major ones like COSATU and NACTU, had been brought together with SACCOLA and some members of the legislative committee of NMC to examine ILO standards in the field of employment, in relation to the Labour Relations Act. It led to a range of measures to improve the Act and to eliminate its more unacceptable features, and finally resulted in the introduction and adoption on 1 May 1991 of the Labour Relations (Amendment) Act of 1991.